

DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal No. 2018-30
	)	
WAYNE BELLILLE,	)	
	)	
Defendant.	)	
	)	

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ATTORNEYS:

Gretchen Shappert, United States Attorney  
Alessandra Parisi Serano, AUSA  
Meredith Edwards, AUSA  
Juan Albino, AUSA  
United States Attorney's Office  
St. Thomas, U.S.V.I.  
*For the United States of America,*

Alexander Golubitsky  
Alex Golubitsky P.C.  
St. Thomas, U.S.V.I.  
*For Wayne Bellille.*

ORDER

GÓMEZ, J.

Before the Court are the motions of Attorney Alex Golubitsky to be relieved as counsel for Wayne Bellille.

**I. FACTUAL AND PROCEDURAL HISTORY**

On September 13, 2018, a federal grand jury returned a seven count indictment against three defendants. On November 5, 2018, the Grand Jury returned a superseding indictment that added both new charges and Wayne Bellille ("Bellille") as an additional defendant. Since that date, the Grand Jury has

returned a second, third, and fourth superseding indictment which have added additional charges and defendants.

The Fourth Superseding Indictment, returned on April 25, 2019, charges eleven defendants with forty-seven criminal counts. In general, the Fourth Superseding Indictment lays out a vast and wide-ranging criminal conspiracy that is alleged to have involved multiple armed robberies and multiple drug trafficking operations along with various murders, attempted murders, and assaults in furtherance of those endeavors. Bellille is charged with seven counts alleging firearm, controlled substance, and Hobbs Act violations.

Bellille was unable to afford counsel. As such the Court appointed Attorney Julie Evert ("Attorney Evert") to represent Bellille on November 7, 2018. Afterward, irreconcilable differences arose between Attorney Evert and Bellille. On March 25, 2019, the Magistrate Judge relieved Attorney Evert as counsel for Bellille. On the same day, Attorney Alexander Golubitsky ("Attorney Golubitsky") was appointed to represent Bellille in this matter.

On April 5, 2019, Attorney Golubitsky filed a motion to withdraw from the representation of Bellille. Attorney Golubitsky's motion to withdraw was based on his assertion that acceptance of this appointment would result in an unreasonable

financial burden on Attorney Golubitski. Additionally, Attorney Golubitsky argued that his position as in-house counsel to a Virgin Islands company would not permit him to dedicate the amount of time necessary to provide competent legal representation in this matter.

On April 25, 2019, the Court heard argument from Attorney Golubitsky on his motion to withdraw. At that time, Attorney Golubitsky explained that he works full time as in-house counsel to a Virgin Islands company. Additionally, Attorney Golubitsky stated that he otherwise works on a small number of pro bono projects in federal court. Attorney Golubitsky further represented that he had only one such pro bono project currently then in this Court, *Duncan v. Government of the Virgin Islands et al.*, Civil No. 3:18-cv-00057. On April 26, 2019, the Court denied Attorney Golubitsky's motion to withdraw.

On August 8, 2019, Bellille filed a renewed motion to withdraw as counsel for Bellille in this matter. In that motion, Attorney Golubitsky asserts that his continued representation of Bellille will result in Bellille not having effective assistance of counsel unless the Court authorizes an adequate budget for representation--including authorization of funds for an associate counsel. Attorney Golubitsky also argues that the Court does not have the authority to require that Attorney

Golubitsky represent a defendant in a criminal matter without Attorney Golubitsky's consent.

On September 20, 2019, Attorney Golubitsky filed an emergency motion to withdraw as counsel for Bellille. In his motion, Attorney Golubitsky argues that he is required to withdraw from this case because of a current, unwaivable, conflict of interest in continuing to represent Bellille. Attorney Golubitsky informs the Court that on September 11, 2019, he associated with the law firm DiRuzzo & Company on an "of counsel" basis. Attorney Joseph DiRuzzo, III, ("Attorney DiRuzzo") of DiRuzzo & Company represents Aracelis N. Ayala ("Ayala"). Based on conversations with the United States in this matter, Attorney Golubitsky understands that Ayala will be a witness at trial in the present matter.<sup>1</sup>

On October 30, 2019, the Court held a hearing on Attorney Golubitsky's motions to withdraw. At that hearing, the Court inquired as to the extent of the relationship between Attorney Golubitsky and DiRuzzo & Company.

MR. GOLUBITSKY: . . . I'm associated with Attorney Joseph DiRuzzo, who I'm sure the Court is familiar with, and as of counsel -

THE COURT: Tell me what associated means.

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<sup>1</sup> At the time Attorney Golubitsky filed his emergency motion, trial was scheduled to commence on December 3, 2019. Since that time, the trial date has been rescheduled several times. Presently, the trial is scheduled to commence on May 18, 2020.

MR. GOLUBITSKY: Oh, I'm of counsel with his firm.

THE COURT: Well, what does that mean?

MR. GOLUBITSKY: It means that I am working with his law firm. I've set up, you know, I'm on his system; I can bill through his billing software; I'm on his malpractice insurance.

THE COURT: Are you working part time or full time?

MR. GOLUBITSKY: Well, I work full time.

THE COURT: With Attorney DiRuzzo?

MR. GOLUBITSKY: No.

THE COURT: Okay. Go ahead.

MR. GOLUBITSKY: The reason why I've associated with Counsel, Attorney DiRuzzo, is we're litigating a number of cases together. And counting this one, it would be five cases which we will be litigating together, and so, it certainly makes sense for me to avail myself to become of counsel with his firm.

See Tr. at 2:23-3:20, October 30, 2019, ECF No. 636. The Court also inquired as to whether Attorney Golubitsky had shared any information regarding his representation of Bellille with Attorney DiRuzzo.

THE COURT: . . . Is there, to your knowledge -- well, I'll just ask you. The work that you've undertaken for Mr. Bellille, have you done anything that would cause you to review matters that involve the representation of Ms. Ayala by Attorney DiRuzzo?

MR. GOLUBITSKY: No, Your Honor.

THE COURT: Okay. And have you shared any information that you have about Mr. Bellille with Mr. DiRuzzo, substantive information like trial strategy, tactics, et cetera?

MR. GOLUBITSKY: Well, I mean -

THE COURT: I'm not talking about what's disclosed in open court. But I'm just talking about, you know -

MR. GOLUBITSKY: I think I can say that, the best way to say it is in a general sense Attorney DiRuzzo and I have discussed the likelihood that Ayala would be a witness in this trial.

*See id.* at 10:5-22.

Thereafter, the Court found that there was no basis to grant Attorney Golubitsky's motion to withdraw. Nevertheless, the Court continued the hearing to October 31, 2019, in order to hear from Attorney DiRuzzo. The Court also informed Attorney Golubitsky that he could submit any supplemental information prior to the continued hearing.

On the same day, Attorney Golubitsky filed a supplemental motion to withdraw as counsel for Bellille. In his motion, Attorney Golubitsky argues that his continued representation of Bellille is a violation of Bellille's Sixth Amendment right to conflict-free counsel. Additionally, Attorney Golubitsky reasserts his argument that this Court never had the authority to appoint him to represent Bellille.

The hearing continued on October 31, 2019. At that time, the Court inquired of Attorney DiRuzzo as to the extent of the relationship between Attorney Golubitsky and DiRuzzo & Company.

THE COURT: . . . Attorney DiRuzzo, I wanted to see if we could establish certain things. Tell us, what is the office where you work. What's the name of it?

MR. DIRUZZO: My law office is Joseph DiRuzzo, III, PA. PA stands for Professional Association, which is a legal entity under Florida law. It goes by the d/b/a of DiRuzzo and Company.

THE COURT: Okay. Attorney DiRuzzo, what is your relationship, business relationship, with Attorney Golubitsky?

MR. DIRUZZO: He is of counsel to my firm.

THE COURT: Okay. And what does that mean?

MR. DIRUZZO: That means that we are working on cases together; he has access to my billing software, and I have included him on my malpractice insurance.

THE COURT: All right. So, would it be fair to say that Attorney DiRuzzo is working with you on selected matters?

MR. DIRUZZO: That Attorney Golubitsky is working?

THE COURT: I'm sorry. Attorney Golubitsky is working with you on selected matters?

MR. DIRUZZO: Yes.

See Tr. at 4:21-5:18, October 31, 2019, ECF No. 637. The Court also inquired as whether either Attorney DiRuzzo or Attorney Golubitsky had had any involvement in the representation of the others' client.

THE COURT: All right. Do you have any direct involvement in the representation of Wayne Bellille?

MR. DIRUZZO: No.

THE COURT: Okay. Does or has Attorney Golubitsky had any direct involvement in representing Aracelis Ayala?

MR. DIRUZZO: No.

*Id.* at 5:19-25. Thereafter, the Court excused Attorney DiRuzzo.

Subsequently, the Court sought further details regarding Attorney Golubitsky's employment and relationship to DiRuzzo & Company.

THE COURT: Okay. Yesterday you said you work full time. Where do you work full time? What constitutes the full-time work that you spoke of yesterday?

MR. GOLUBITSKY: Your Honor, as I made it clear when I initially moved to withdraw from this case back in April, I'm in-house counsel for a company called Breasonix Holdings VI, LLC. That's my full-time employment.

THE COURT: And for that entity, you work full time with that entity. Is that correct?

MR. GOLUBITSKY: Yes, Your Honor.

THE COURT: Okay. All right. And so, your relationship with Attorney DiRuzzo would be regarded as, what, part time? It's not full time. Is that correct?

MR. GOLUBITSKY: Correct.

*Id.* at 10:10-25.

Thereafter, the Court denied Attorney Golubitsky's motions to withdraw. Specifically, the Court found that

what the Court has before it is a relationship with Attorney DiRuzzo that seems related to certain matters. It is certainly not a full-time relationship. It might be, for a lack of a better category, a part-time relationship or an ad hoc relationship with respect to certain matters. Significantly, neither attorney has been directly involved in the representation of any of the clients that each of the attorneys represent here. And when I say the clients, I'm referring in the case of



Attorney Golubitsky to Mr. Bellille and with respect to  
Attorney DiRuzzo to Ms. Ayala.

*Id.* at 18:7-18.

## II. DISCUSSION

### A. Appointment of Counsel

"Federal criminal defendants facing imprisonment are entitled to representation of counsel, *see, e.g.,* U.S. Const. amend. VI; *Johnson v. Zerbst*, 304 U.S. 458, 462 [] (1938), and the power of courts to appoint counsel for such defendants is thus necessary to preserve their constitutional rights." *United States v. 30.64 Acres of Land*, 795 F.2d 796, 801 (9th Cir. 1986). "The United States by statute . . . make[s] it the duty of the trial judge, where the accused is unable to employ counsel, to appoint counsel for him." *Powell v. Alabama*, 287 U.S. 45, 73 (1932).

Under the Criminal Justice Act ("CJA"), 18 U.S.C. §3006A, all persons charged with federal criminal offenses who are financially unable to obtain counsel are entitled to appointment of counsel to represent them. The CJA requires that each United States district court--including the District Court of the Virgin Islands, *see* 18 U.S.C. § 3006A(j)--have a plan for furnishing representation to any eligible defendant. *See* 18 U.S.C. § 3006A(a). Pursuant to the plan, the CJA authorizes a district court to appoint private attorneys "from a panel of

attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization.” See 18 U.S.C. § 3006A(b).

“Attorneys are officers of the court, and are bound to render service when required by such an appointment.” *Powell*, 287 U.S. at 73; see also *Barnard v. Thorstenn*, 489 U.S. 546, 557-58 (1989) (recognizing the legitimacy of the Bar of the District Court of the Virgin Islands’s interest in requiring its entire membership to share in the burdens of providing representation to indigent defendants in criminal cases); *Supreme Court of N.H. v. Piper*, 470 U.S. 274, 287 (1985) (explaining that a State can require both resident and nonresident members of a state bar to represent indigent defendants as a condition for practice before the bar).

#### **B. Conflict of Interest**

The Local Rules of the District Court of the Virgin Islands provide that “each attorney admitted or permitted to practice before this Court shall comply with the standards of professional conduct required by the Model Rules of Professional Conduct (the ‘Model Rules’), adopted by the American Bar Association, as amended.” See LRCi 83.2(a)(1).

Model Rule 1.7 governs the ethical obligations of attorneys where a conflict of interest exists between current clients.

Model Rule 1.7 provides that

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

See ABA Model Rules of Professional Conduct Rule 1.7.

Model Rule 1.10 governs the ethical obligations of attorneys where attorneys are associated in a firm. Model Rule 1.10 in pertinent part provides that

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule[] 1.7 . . .

See ABA Model Rules of Professional Conduct Rule 1.10(a).

### **III. ANALYSIS**

#### **A. Appointment of Counsel**

##### **1. Authority to Appoint**

Attorney Golubitsky argues that this Court does not have the authority to appoint him to represent a criminal defendant.

Pursuant to the CJA, the District Court of the Virgin Islands has established a plan for furnishing representation to any eligible defendant (the "CJA Plan"). See United States District Court District of the Virgin Islands, Criminal Justice Act Plan (Revised 2011) [hereinafter CJA Plan], *available at* [https://www.vid.uscourts.gov/sites/vid/files/cja\\_plan\\_vid.pdf](https://www.vid.uscourts.gov/sites/vid/files/cja_plan_vid.pdf). Appendix II to the CJA Plan provides a plan for the composition, administration, and management of the panel of private attorneys authorized by the CJA. CJA Plan app. II. Pursuant to this plan, this Court maintains a panel of attorneys (the "CJA Panel") from which it appoints attorneys to represent criminal defendants when the Federal Public Defender is not appointed. Additionally,

the plan in pertinent part provides that, "[t]o the extent the existing panel is inadequate to provide representation as required, the appointing Judge may then consider the list of all attorneys admitted to practice in the District Court." *Id.* at 3.

The Federal Public Defender and a majority of the members of the CJA Panel have conflicts of interest that prevent them from being appointed to represent any of the defendants in this case. In short, the existing CJA panel is inadequate to provide representation as required to the defendants in this matter. Consequently, the Court considered the list of all attorneys admitted to practice in the District Court when appointing counsel to each defendant in this matter. Even with that range of options, finding counsel to represent the several defendants in this case has been an arduous task for the Court.

With respect to Attorney Golubitsky, he is admitted to the Bar of the District Court of the Virgin Islands. As such, Attorney Golubitsky is subject to both the privileges and the responsibilities of such admission, including appointments to represent indigent defendants. The Court is unaware of any authority that limits its power to appoint attorneys under the CJA who are admitted to practice before this Court.

## **2. Scope of Appointment**

When an attorney is appointed under the CJA to represent an eligible defendant, that attorney is responsible for representing the defendant through every stage of the proceedings. *Cf.* 18 U.S.C. § 3006A(c) ("A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the U.S. magistrate judge or the court through appeal, including ancillary matters appropriate to the proceedings.").

Here, Attorney Golubitsky was appointed by the Court to represent Bellille in this matter. As such, Attorney Golubitsky is the individual attorney ultimately responsible for the representation of Bellille.

## **B. Conflict of Interest**

Attorney Golubitsky asserts that he has a current unwaivable conflict of interest with his continuing representation of Bellille in this matter. The alleged conflict is premised on the representation of Ayala by Attorney DiRuzzo. Attorney Golubitsky argues that, because he is associated with Attorney DiRuzzo through the firm DiRuzzo & Company, Attorney DiRuzzo's representation of Ayala imputes to Attorney Golubitsky under Model Rule 1.10. Because Ayala is expected to be a witness for the government in this matter, Attorney Golubitsky argues

that he is ethically proscribed from cross-examining her at trial.

"Conflicts of interest arise whenever an attorney's loyalties are divided . . . and an attorney who cross-examines [] clients inherently encounters divided loyalties." *United States v. Moscony*, 927 F.2d 742, 750 (3d Cir. 1991). As such, if Attorney Golubitsky individually represented both Bellille and Ayala, there would certainly be a conflict of interest. However, Attorney Golubitsky does not represent Ayala, Attorney DiRuzzo does. As such, the Court must determine whether Attorney Golubitsky's relationship with DiRuzzo & Company causes the conflict arising from Attorney DiRuzzo's representation of Ayala to impute to Attorney Golubitsky.

Significantly, although "an attorney's conflicts are ordinarily imputed to his firm based on the presumption that 'associated' attorneys share client confidences, . . . attorneys with limited links to a firm are not always considered to be 'associated' with the firm for purposes of conflict imputation." *Hempstead Video, Inc. v. Inc. Vill. of Valley Stream*, 409 F.3d 127, 133 (2d Cir. 2005). Indeed, while "some courts have treated the presumption that confidences are shared within a firm as irrebuttable, there is a 'strong trend[]' . . . toward allowing

the presumption of confidence sharing within a firm to be rebutted." *Id.*

"Whether an attorney is associated with a firm for purposes of conflict imputation depends in part on the existence and extent of screening between the attorney and the firm."

*Hempstead Video, Inc. v. Inc. Vill. of Valley Stream*, 409 F.3d 127, 134 (2d Cir. 2005). For example, "[a]n 'of counsel' attorney, who handles matters independent of his firm and scrupulously maintains files for his private clients separate from the files of the firm, is less likely to be considered associated with the firm with respect to those clients than another attorney in the same position whose client files are not effectively segregated from those of the firm." *Id.*

Significantly, the Second Circuit has concluded that "the better approach for deciding whether to impute an 'of counsel' attorney's conflict to his firm for purposes of ordering disqualification in a suit in federal court is to examine the substance of the relationship under review and the procedures in place." *Id.* at 135.

The closer and broader the affiliation of an "of counsel" attorney with the firm, and the greater the likelihood that operating procedures adopted may permit one to become privy, whether intentionally or unintentionally, to the pertinent client confidences of the other, the more appropriate will be a rebuttable imputation of the conflict of one to the other. Conversely, the more narrowly limited the relationship between the "of



counsel" attorney and the firm, and the more secure and effective the isolation of nonshared matters, the less appropriate imputation will be. Imputation is not always necessary to preserve high standards of professional conduct. Furthermore, imputation might well interfere with a party's entitlement to choose counsel and create opportunities for abusive disqualification motions.

*Id.* at 135-36.

In *United States v. Kilpatrick*, 798 F.3d 365 (6th Cir. 2015), the Sixth Circuit cited *Hempstead Video* with approval. In *Kilpatrick*, Kwame Kilpatrick ("Kilpatrick"), the former mayor of Detroit, was charged with numerous counts of bribery, extortion, mail and wire fraud, RICO conspiracy, and tax evasion stemming from an alleged conspiracy to extort money from Detroit-area contractors. *Kilpatrick*, 798 F.3d at 373. Prior to his indictment, Kilpatrick had retained James Thomas ("Thomas") to represent him in unrelated matters. *Id.* After Kilpatrick was indicted, the district court--upon Kilpatrick's request--appointed Thomas and Michael Naughton ("Naughton") as Kilpatrick's counsel under the Criminal Justice Act. *Id.*

After Kilpatrick was indicted, but before his trial, the Macomb Interceptor Drain Drainage District ("Macomb") filed a civil complaint against Kilpatrick as lead defendant in a case involving the Macomb Drain project--one of the city sewer department projects that was connected to the criminal case. *Id.* Macomb was represented by the firm of O'Reilly Rancilio P.C.

("the O'Reilly Firm"). *Id.* Thereafter, Thomas and Naughton became "of counsel" attorneys with the O'Reilly Firm. *Id.*

Shortly before the criminal trial, the district court asked for briefing on all possible conflicts. *Id.* At a conflict hearing, Thomas explained that he and Naughton maintained a separate office from the O'Reilly Firm, had separate electronic filings systems, and had no financial ties to the Macomb Drain litigation. *Id.* at 374. Thereafter, the district court declined to disqualify Kilpatrick's attorneys.<sup>2</sup> *Id.* After being convicted of numerous counts at trial, Kilpatrick appealed, claiming that he was denied his constitutional right to conflict-free counsel. Specifically, Kilpatrick argued that Thomas and Naughton had an actual conflict of interest due to the O'Reilly Firm's simultaneous representation of the plaintiff in the civil suit against Kilpatrick. *Id.*

The Sixth Circuit found that Kilpatrick's ineffective-assistance claim failed because he could not show that "his attorneys actively represented conflicting interests." *Id.* at 375. The Sixth Circuit explained that

[a]lthough a lawyer's conflicts are ordinarily imputed to his or her firm based on the presumption that associated attorneys share client confidences, contrary to the Michigan ethics opinion, "attorneys with limited links to a firm are not always considered to be

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<sup>2</sup> The district court did appoint a separate attorney to cross-examine the witnesses related to the Macomb Drain project. *Kilpatrick*, 798 F.3d at 374.

'associated' with the firm for purposes of conflict imputation." *Hempstead Video*, 409 F.3d at 133 (citing, among others, *Manning v. Waring, Cox, James, Sklar & Allen*, 849 F.2d 222, 224 (6th Cir. 1988) (holding that screening measures can rebut the presumption of shared confidences)). Here, in light of (1) the "thick ethical wall" between Kilpatrick's counsel and the firm; . . . and (3) the court's decision to appoint a fourth defense attorney to cross-examine the Macomb Drain contract witnesses, the district court plausibly determined that no actual conflict existed. Furthermore, on account of the ethical wall separating Thomas and Naughton from the O'Reilly Firm (and the physical distance between the two offices), the district court properly concluded that Kilpatrick's lawyers were not so closely associated with the O'Reilly Firm that the firm's conflict of interest should be imputed to them. See *Hempstead Video*, 409 F.3d at 132-36 (discussing the variation in "of counsel" relationships and adopting a functional approach that focuses on the substance of the relationship and the nature of the screening procedures to determine whether to impute a conflict of interest).

*Id.* at 375-76.

While *Hempstead Video* and *Kilpatrick* are not binding on this Court, they are persuasive here. In this matter, Attorney Golubitsky asserts that he associated with the law firm DiRuzzo & Company on an "of counsel" basis approximately five and one half months after his appointment as counsel for Bellille in this matter. DiRuzzo & Company is located in Florida. Significantly, Attorney Golubitsky continues to work full time as in-house counsel for a Virgin Islands company. Moreover, Attorney Golubitsky is litigating only four cases with DiRuzzo & Company. While Attorney Golubitsky is "set up . . . on [DiRuzzo & Company's] system; [] can bill through [DiRuzzo & Company's]

billing software; [and is] on [DiRuzzo & Company's] malpractice insurance," see Tr. at 3:6-8, October 30, 2019, ECF No. 636, Attorney Golubitsky confirmed that he has not shared any information regarding his representation of Bellille with Attorney DiRuzzo or DiRuzzo & Company. Attorney Golubitsky and Attorney DiRuzzo have also each confirmed that neither has been involved with the representation of the others' respective client.

Viewing the totality of the circumstances surrounding the relationship between Attorney Golubitsky and DiRuzzo & Company, the Court finds that the relationship is narrowly limited such that Attorney Golubitsky and Attorney DiRuzzo may effectively isolate their nonshared matters, specifically the representations of Bellille and Ayala respectively. As such, the Court finds that there is no conflict between Attorney DiRuzzo's representation of Ayala and Attorney Golubitsky's representation of Bellille.

The premises consider, it is hereby

**ORDERED** that Attorney Golubitsky's several motions to withdraw from the representation of Bellille in this matter are **DENIED**.

S\\_\_\_\_\_  
**Curtis V. Gómez**  
**District Judge**